accepting them as security for loans. Trust is essential in the financial world.

These offences involved fraud which concerned not just the appellant and Eng but the whole commercial and financial institutions in Singapore. The appellant audaciously carried out these forgeries. The forging of share certificates must be viewed seriously; they represent title to valuable shares. I agree with the trial judge that a deterrent sentence ought to be imposed for what the appellant did.

Section 467 of the Penal Code provides for a punishment of either life imprisonment, or ten years' imprisonment and in addition a fine. The imposition of consecutive sentences in respect of two of the charges was a proper exercise of discretion. The overall sentence of eight years' imprisonment is not manifestly excessive.

In the result this appeal is dismissed.

Appeal dismissed.

Solicitors: *Toh Tan & Partners.*

BRUNEI REPORTS

YATOR BIN BUNTA v. PUBLIC PROSECUTOR

**[C.A. (Yang P., Silke & Godfrey JJ.)
30 May & 1 June 1988]**

[Bandar Seri Begawan – Criminal Appeal No. 8 of 1987]

Criminal Procedure – Criminal appeal to Privy Council – Notice of motion filed to seek leave of Court of Appeal – Whether Court of Appeal can grant such leave – Brunei (Appeals to the Privy Council) Orders in Council 1951 and 1963 – Judicial Committee Act 1833, s. 3.

The appellant was sentenced to death by the High Court on charges of murder and possession of firearms. His appeal to the Court of Appeal was dismissed. The appellant then filed a notice of motion seeking the leave of the Court of Appeal to appeal to the Judicial Committee of the Privy Council.

Held: (1) the principle that the Judicial Committee is not a court of criminal appeal still pertains. Should their Lordships consider a matter criminal to be one fit for their consideration, then they reserve to themselves the giving of special leave after which the matter is directed to be heard at an appropriate date;

(2) matters criminal emanating from Brunei can still be presented to Her Majesty in Council but it is not open to the court here to accede to the order sought in the notice of motion;

(3) the application is misconceived and the court makes no order upon it.

Case referred to:

(1) *In Re Abraham Mallory Dillet* (1887) 12 App. Cas. 459 (folld).

COURT OF APPEAL.

Francis Chiew for the appellant.

Dk. Zabaidah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Silke J. (delivering the judgment of the court): Yator bin Bunta was, in the High Court in Brunei Darussalam, tried before O'Connor J., sitting as a judicial commissioner, and two assessors. At the conclusion of that trial, on 25 March 1987, the assessors returned verdicts of not guilty. O'Connor J. disagreed with them and as a result directed a new trial.

The retrial took place before Macdougall J., sitting as judicial commissioner, and two assessors. The charges were the same: murder contrary to section 300 of the Penal Code and possession of a

firearm in a special area without lawful authority contrary to section 28(1) of the Public Order Act.

On 15 June 1987, Yator was convicted of both offences and sentence of death was passed. This, we are told, is the first sentence of death passed in Brunei for many years. Yator appealed against his convictions to the Court of Appeal (consisting of Briggs P., Clough and Hooper JCs) and on 3 December 1987, his appeal was dismissed.

We now have for consideration a notice of motion filed on 3 January 1988 seeking the leave of this court to appeal to the Judicial Committee of the Privy Council.

In 1963, the old unified judiciary of Sarawak, North Borneo and Brunei, on the coming into being of Malaysia, ceased to exist. The Brunei (Appeals to the Privy Council) Order in Council 1963 (S.I. 1963 No. 1491) – contained in the Subsidiary Legislation Brunei 1963 as G.N.S. 153 at p. 262 – provided in its section 1(1) that that order be construed as one with the Sarawak, North Borneo and Brunei (Appeals to the Privy Council) Order in Council 1951 (S.I. 1951/1949) – the latter being referred to as "the principal Order".

The principal Order and the 1963 Order are to be cited together as "The Brunei (Appeal to the Privy Council) Orders in Council 1951 and 1963" – "the Orders". The Orders amended, consequentially, the principal Order.

The Orders revoked the Sarawak, North Borneo and Brunei (Courts) Order in Council 1951 (S.I. 1951/1948) – the revoked Order. By section 14 of the Supreme Court Act of the Laws of Brunei, the revoked Order was revived.

In civil matters, the provisions of section 3 of the principal Order, which are *in pari materia* with the provisions of the Order in Council regulating appeals from the Supreme Court or Court of Appeal in Hong Kong to Her Majesty in Council (Vol. 29 Appendix 111 PF1 of the Laws of Hong Kong), apply. In Hong Kong, it has been the invariable practice, in criminal matters for those who wish to appeal, to seek special leave direct from the Judicial Committee and not to go by way of motion for leave to the Court of Appeal.

In a Practice Note, reported in *The Times Law Reports* Vol. 48 1931-1932 at p. 300, Viscount Dimedin, on behalf of their Lordships of the Judicial Committee, said:

> "Their Lordships have repeated *ad nauseam* the statement that they do not sit as a Court of Criminal Appeal. For them to interfere with a criminal sentence there must be something so irregular or so outrageous as to shake the very basis of justice."

He made reference to *In Re Abraham Mallory Dillet.*[1] In *Dillet,* the headnote succintly sets out the basis upon which Her Majesty in Council will review criminal proceedings. They will not be reviewed:

> "unless it be shown that by disregard of the forms of legal process, or by some violation of the principle of natural justice, or otherwise, substantial and grave injustice has been done."

In modern times, their Lordships take a somewhat wider view but the principle that the Judicial Committee is not a court of criminal appeal still pertains. Should their Lordships consider a matter criminal to be one fit for their consideration, then they reserve to themselves the giving of special leave after which the matter is directed to be heard at an appropriate date – Judicial Committee Act 1833, section 3 (p. 543 and the footnote at p. 544, *Halsbury's Statutes* 4th Ed. Vol. 11).

On 30 May, we adjourned this application to permit counsel to make some research and he has further submitted to us this morning. That which he has said has not altered the views we have formed despite his drawing to our attention the definition of judgment contained in the Order in Council which reads: " 'Judgment' includes decree, order, sentence or decision."

Mr. Chiew's submission is that the word "sentence" contained in that definition brings matters criminal within the Order in Council generally, so that it is necessary and proper to seek the leave of this court to proceed to Her Majesty in Council.

I note that that definition of judgment is in precisely the same terms as the one contained in the Hong Kong Order in Council, to which I have earlier referred.

Matters criminal emanating from Brunei can still of course be presented to Her Majesty in Council, but we do not think that it is open to us to accede to the order sought in the notice of motion here and this without giving consideration to the merits of *Yator's* case. We do not wish anything which we might have said to inhibit Yator and his advisers, and we understand that any

application is *in forma pauperis*, from proceeding to seek special leave. They would be well advised, and no doubt will be assisted by the Chief Registrar of the Supreme Court of Brunei Darussalam, to bear in mind paras 786, 787 and 788 of *Halsbury's Laws of England* 4th Ed. Vol. 10.

We take the view that this application is misconceived and we will make no order upon it.

Solicitors: *Ibrahim Chee & Co.*

PUBLIC PROSECUTOR v. WONG KOK SEIN & ORS.

[C.A. (Yang P., Silke & Godfrey JJ.)
30 May & 1 June 1988]

[Bandar Seri Begawan – Criminal Appeal No. 13 of 1987]

Criminal Procedure – Sentencing – Whether sentences for kidnapping and extortion should run concurrently or consecutively – Whether totality of the sentences was inadequate – Criminal Procedure Code (Cap. 7), s. 13(1).

Criminal Law – Kidnapping and extortion offences – Whether offences form two distinct incidents or one single transaction – Penal Code (Cap. 22), ss. 34, 365 & 385.

The respondents pleaded guilty to criminal charges of kidnapping and extortion. The trial court ordered the sentences for kidnapping and extortion to run concurrently. The Public Prosecutor appealed against the trial court's decision on the ground that the concurrent sentences were wrong in principle and should have been ordered to run consecutively. Reliance was placed on section 13(1) of the Criminal Procedure Code for this contention. The Public Prosecutor also contended that kidnapping and extortion constituted not only two distinct offences but also two distinct incidents, and it was wrong for the trial court to view these two offences as forming one transaction.

Held, dismissing the appeal: (1) that the accused were charged with distinct offences does not mean the distinct offences must be necessarily considered to be distinct incidents;

(2) section 13(1) simply provides the "mechanics" of sentencing and gives no direction as to preference or priority between consecutive and concurrent sentences;

(3) on the facts of the case, the trial court was perfectly entitled to come to the conclusion that the kidnapping and the extortion constituted one transaction. The trial court did not err in principle.

Cases referred to:

(1) *R.* v. *Jones* (1980) 2 Cr. App. R. (S) 152 (refd).
(2) *R.* v. *Kastercum* (1972) 56 Cr. App. R. 298 (refd).
(3) *R.* v. *Faulkner* (1972) 56 Cr. App. R. 594 (refd).
(4) *R.* v. *Wheatley* (1983) 5 Cr. App. R. (S) 417 (refd).
(5) *R.* v. *Dillon* (1983) 5 Cr. App. R. (S) 439 (refd).
(6) *Lee Chow Meng* v. *Public Prosecutor* [1976] 1 M.L.J. 287 (refd).
(7) *Hashim bin Pawanchee & Anor.* v. *Public Prosecutor* [1988] 2 M.L.J. 66 (refd).
(8) *Attorney-General* v. *Dominic Cheung Kai Man* Application of Review No. 1 of 1987 (refd).
(9) *Attorney-General* v. *Lau Chiu-tak* [1984] H.K.L.R. 23 (folld).

COURT OF APPEAL.

Ivan Leong (Deputy Public Prosecutor) for the appellant.

Y. Y. Chin for the first respondent.

Raymond Szetu for the second, third and fourth respondents.

Ferida Abang Zen for the fifth respondent.

Cur. Adv. Vult.

Yang P. (delivering the judgment of the court): This is the Public Prosecutor's application for review of sentence on the grounds that the sentences imposed upon the respondents are wrong in principle and/or manifestly inadequate.

At the hearing of the application, however, Mr. Ivan Leong, on behalf of the Public Prosecutor, does not seek to argue that the individual sentences imposed on each of the defendants are inadequate but seeks to argue that the concurrent sentences imposed are wrong in principle in that they should have been ordered to run consecutively. Furthermore he argues that, because the sentences have been ordered to run concurrently, the totality of the sentence on each of the respondents is inadequate. This argument does not relate to D5 who was but 14 years of age at the time of the offence and was placed on a bond and probation. As Mr. Leong does not seek to pursue his application for review in respect of D5, the application as far as D5 is concerned is dismissed. We are therefore concerned only with D1, D2, D3 and D4.

D1, D2 and D4 pleaded guilty to kidnapping, contrary to section 365 read with section 34 of the Penal Code. D3 pleaded guilty to abetting the kidnapping under the same section. D1, D2, D3 and D4 also pleaded guilty to extortion contrary to section 385, also read with section 34 of the Penal Code. The facts of the case are as follows.

On the evening of 8 April 1987, the victim, a 12-year-old boy, was kidnapped near his tutor's flat and bundled into a waiting car. The man who seized the boy was D1. The car was driven by D5, with D4 seated by the side of the boy at the back. On arrival at their destination, the boy was blind-